

**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

ACOP-CE-05-9013-2A

Novotech Inc.

FMF# 320600

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY  
AND  
NOTICE OF NONCOMPLIANCE**

**I. THE PARTIES**

A. The Department of Environmental Protection ("the Department") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. The Department maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Central Regional Office at 627 Main Street, Worcester, Massachusetts 01608.

B. Novotech Inc. (the "Company") is a Massachusetts corporation with a principal office and manufacturing facility at 916 Main Street in Acton, Massachusetts (the "Facility").

**II. STATEMENT OF FACTS AND LAW**

C. The Department is responsible for the implementation and enforcement of M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000; M.G.L. c. 21, §§ 26-53, and the Groundwater Discharge Permit Regulations at 314 CMR 5.00; and M.G.L. c. 21A, § 13, and the Title 5 Subsurface Sewage Disposal Regulations at 310 CMR 15.00. The Department has authority under M.G.L. c. 21A, § 16, and the Administrative Penalty Regulations at 310 CMR 5.00, to assess civil administrative penalties to persons in noncompliance with its Regulations.

D. The Company is currently registered as a Hazardous Waste Small Quantity Generator and a Waste Oil Very Small Quantity Generator pursuant to 310 CMR 30.000 et seq.

E. On November 10, 2004, while performing an inspection, the Department observed the following violations:

### HAZARDOUS WASTE

1. The Company had not determined whether the wastes it generates are hazardous, in violation of 310 CMR 30.302. Specifically, the Company had 55-gallon and 5-gallon containers of waste solvents, coolants, germanium slurries, gallium/arsenide (GaAs) slurries, and GaAs wastewaters that were not characterized as hazardous or nonhazardous.

2. The Company's Hazardous Waste accumulation area was not marked, in violation of 310 CMR 30.351(8)(b), 310 CMR 30.353 (6)(h) and 310 CMR 30.341(5). Specifically, containers of waste oil and solvents were accumulated in an area with no demarcation between them and other containers of known non-hazardous materials and empty containers.

3. The Company was accumulating Waste Oil in a satellite container which was open and not properly managed, in violation of 310 CMR 30.253(6)(c), 310 CMR 30.353(6)(g), and 310 CMR 30.685(1). Specifically, an open bucket of waste oil was observed at the compressor in the receiving room.

4. The Company's Waste Oil accumulation and satellite accumulation containers were not properly labeled, in violation of 310 CMR 30.253(6)(c), 310 CMR 30.353(6)(g), 310 CMR 30.353(6)(i) and 310 CMR 30.682. Specifically, containers of waste oil in the accumulation area and at the cutting machines and compressor were not labeled.

### INDUSTRIAL WASTEWATER

5. The Company was discharging industrial wastewater from the germanium cutting operation to the ground water via a septic system, in violation of 314 CMR 5.00, 310 CMR 15.004(5) and 310 CMR 15.004(7). Specifically, the Company estimated that 20 gallons per week of industrial wastewater were being discharged to the septic system.

F. On January 18, 2005, the Department issued a Notice of Enforcement Conference to the Company describing the above violations and setting a date to meet with the Company to discuss the violations, and requirements for coming into compliance.

G. On February 1, 2005, representatives of the Company met with representatives of the Department and presented its responses to the noncompliance matters identified in the Notice of Enforcement Conference.

H. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the allegations set forth above.

### III. DISPOSITION AND ORDER

For the reasons set forth above, the Department hereby issues, and the Company hereby consents to, the following Order:

I. The Department's authority to issue this Consent Order is conferred by M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000; M.G.L. c. 21, §§ 26-53, and the Groundwater Discharge Permit Regulations at 314 CMR 5.00; M.G.L. c. 21A, § 13, and the Title 5 Subsurface Sewage Disposal Regulations at 310 CMR 15.00; and the Administrative Penalty Regulations at 310 CMR 5.00.

J. The Company shall comply with the Department's Interim Policy on Compliance Incentives for Small Business, Policy #ENF-97-.002 (the "Policy"), and obtain on-site compliance assistance from a consultant who is knowledgeable in Hazardous Waste and Industrial Wastewater to assist the Company in returning to compliance with the requirements of Paragraph K. below; maintaining future compliance; and investigating pollution prevention, source reduction, and resource conservation measures.

K. The Company shall take the following actions:

#### HAZARDOUS WASTE

1. Effective immediately, comply with 310 CMR 30.302 and determine whether the wastes generated at the Facility are hazardous. This would include, but not be limited to, determining the status of the wastes and their proper handling, accumulation, manifesting and disposal according to 310 CMR 30.000 et seq.

2. Effective immediately, comply with 310 CMR 30.351(8)(b), 310 CMR 30.353 (6)(h) and 310 CMR 30.341(5) with respect to clearly marking all areas where wastes are accumulated (e.g., by a clearly visible line or piece of tape on the floor, or by a gate or fence, or by a sign at the boundary of a clearly distinguishable area).

3. Effective immediately, comply with 310 CMR 30.253(6)(c), 310 CMR 30.353(6)(g), and 310 CMR 30.685(1) with respect to keeping containers holding Waste Oil closed during storage, except when waste is being added or removed.

4. Effective immediately, comply with 310 CMR 30.253(6)(c), 310 CMR 30.353(6)(g), 310 CMR 353(6)(i)5. and 310 CMR 30.682 with respect to labeling throughout the period of storage. The side of each container(s) of Waste Oil shall be clearly labelled and marked in a manner which identifies, in words "Hazardous Waste", the Hazardous Waste(s) being stored in the container(s) (e.g., Waste Oil) and the hazards associated with the waste (e.g., toxic).

INDUSTRIAL WASTEWATER

5. Effective immediately, comply with 314 CMR 5.00, 310 CMR 15.004(5) and 310 CMR 15.004(7) by ceasing the discharge of all industrial wastewater to the septic system.

L. Actions taken pursuant to this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving the Company or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

M. The Department hereby determines, and the Company hereby agrees, that the deadlines set forth above constitute reasonable periods of time for the Company to take the actions described above.

N. The Company hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review.

O. This Consent Order represents the full and final agreement among the parties concerning the matters described herein, and supersedes all prior oral and written agreements and discussions.

P. This Consent Order may be modified only by written agreement of the parties hereto. The provisions of this Consent Order are severable, and if any provision of this Consent Order, or the application thereof, is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application; provided, however, that the Department shall have the discretion to void this Consent Order in the event of any such invalidity.

Q. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of the Department to issue any additional Order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding. Notwithstanding the foregoing, the Department agrees that it will not seek to assess the Company civil administrative penalties beyond those described in this Consent Order for the violations identified in Part II. above, provided that the Company satisfies the terms and conditions of this Consent Order and any approval issued hereunder.

R. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of the Department with respect to any subject matter not covered by this Consent Order.

S. Nothing in this Consent Order shall be construed:

1. to waive any of the Company's rights in any other enforcement action, including any statute of limitations for violations identified pursuant to this Consent Order, unless such right is expressly waived or limited pursuant to this Agreement; or

2. to waive any of the Company's rights under any other written agreement, order or permit with or from the Department, unless such right is expressly waived or limited therein or pursuant to this Consent Order.

T. This Consent Order shall be binding upon the Company and upon its directors, officers, employees, agents, contractors, successors and assigns. No change in ownership or of the corporate or legal status of the Company will alter the Company's obligations under this Consent Order. Violation of this Consent Order by any of the foregoing persons or entities shall constitute violation of this Consent Order by the Company. The Company shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs. The Company shall provide a copy of this Consent Order to each agent, contractor or employee who is engaged to implement the terms of this Consent Order.

U. For purposes of M.G.L. c. 21A, § 16, and 310 CMR 5.00, this Consent Order shall serve as a Notice of Noncompliance for the Company's noncompliance with the requirements cited in Part II above.

V. The Company is assessed a civil administrative penalty in the amount of Four Thousand Four Hundred Seventy-Seven Dollars (\$4,477.00) for the violations identified in Part II. above. Through the application of the Policy, the Department will suspend Three Thousand Four Hundred Seventy-Seven Dollars (\$3,477.00) of the civil administrative penalty. The Company shall pay to the Commonwealth the assessed civil administrative penalty, as follows:

1. Within thirty (30) days of the effective date of this Consent Order, the Company shall pay One Thousand Dollars (\$1,000.00) to the Commonwealth; and

2. In the event the Company violates this Consent Order within ninety (90) days of the effective date of this Consent Order, the Company shall pay to the Commonwealth the amount of the suspended penalty, Three Thousand Four Hundred Seventy-Seven Dollars (\$3,477.00), within ten (10) days of receipt of the Department's written demand for payment.

This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of the Department to assess the Company additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

W. In addition to the penalty in Paragraph V. above, the Company shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if the Company violates this Consent Order:

For each day, or portion thereof, of each violation, the Company shall pay stipulated civil administrative penalties to the Commonwealth as follows:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 <sup>st</sup> through 15 <sup>th</sup> days	\$ 250.00 per day
16 <sup>th</sup> through 30 <sup>th</sup> days	\$ 500.00 per day
31 <sup>st</sup> day and thereafter	\$1,000.00 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day the Company corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified the Company of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within ten (10) days of the date the Department sends the Company a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way the Company's obligation to complete performance as required by this Consent Order. The Department reserves its right to elect to pursue other remedies and penalties, including administrative, civil and criminal penalties, in accordance with applicable laws if the Company violates any provision of this Consent Order. In the event the Department elects to pursue such other remedies or penalties, the Company shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order.

X. The Company shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order payable to the Commonwealth of Massachusetts. The Company shall clearly print on the face of its payment the Company's full name, the ACOP number appearing on the first page of this Consent Order (or the ACOP number appearing on the first page of a payment demand letter), and the Company's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

The Company shall mail a copy of the payment to:

John F. Kronopolus, Section Chief  
Department of Environmental Protection  
Central Regional Office  
627 Main Street  
Worcester, Massachusetts 01608

In the event the Company fails to pay in full, any civil administrative penalty on or before the date due under this Consent Order, and in the manner and form required by this Consent Order, the Company shall pay to the Commonwealth three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, §6C. The Company shall not be deemed to have returned to compliance until the Company pays all penalties due under this Consent Order and takes all actions required by this Consent Order.

7. The Company agrees to provide the Department, and the Department's employees, representatives and contractors, access at all reasonable times to the Facility for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provisions of this Consent Order, the Department retains all of its access authorities and rights under applicable state and federal law.

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Z. The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the parties that they represent.

AA. This Consent Order shall become effective on the date that it is executed on behalf of the Department.

**NOVOTECH, INC.**

By: Michael Hulen

Date: 3/10/05

[Print Name] MICHAEL HULEN

[Title] PRESIDENT

[Address] 916 MAIN ST

ACTON MA 01720

[Telephone] 978-929-9458

Federal Employer Identification No. 04-3335865

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: M. Suuberg

Date: 3/10/05

Martin Suuberg, Regional Director  
Central Regional Office  
627 Main Street  
Worcester, Massachusetts 01608  
Telephone: (508) 792-7650

MS/JFK/GS-P